

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1702

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-fourth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 2, 2017, **Vol. 17-8, pages 128 through 159**. After consideration of public comments, Section 007 has been revised. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1702 or by contacting the undersigned.

In addition, as a result of public comments received, the information regarding arsenic criteria effective for Clean Water Act (CWA) purposes has been revised. This notation is inserted in the Subsection 210.01 table immediately below the row that contains the arsenic criteria for protection of human health. While the information provided in the note box is not rule text, the revisions were included in the final proposal for consideration by the Idaho Board of Environmental Quality as part of the rulemaking record.

Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho's adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208) 373-0418.

DATED this 3rd day of January, 2018.

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DOCKET NO. 58-0102-1702 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized red text that is double underscored is new text that has been added to the pending rule.

The text of the proposed rule was published in the Idaho Administrative Bulletin,
Volume 17-8, August 2, 2017, pages 128 through 159.

This rule has been adopted as a pending rule by the Agency and is now awaiting
review and final approval by the 2018 Idaho State Legislature.

THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE FOR
DOCKET NO. 58-0102-1702

(Only those sections or subsections that have changed from the original proposed
text are printed in this Bulletin following this notice.)

[Section 007 is reprinted in its entirety]

007. EFFECTIVE FOR CLEAN WATER ACT PURPOSES.

01. Alaska Rule. Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see 40 CFR 131.21). This is known as the Alaska Rule. The process for revising the Idaho water quality standards subject to EPA review and approval, while also retaining the rules effective for CWA purposes, is set out in Subsections 007.02 and 007.03. ()

02. Existing Rule Retained for Clean Water Act Purposes Until EPA Approval of Rule Revisions. ()

a. When proposing revisions, the Department will make the proposed revisions using legislative format and, in the same rule docket, retain the existing rule that continues to be effective for CWA purposes until the date EPA issues written notification that the rule revisions have been approved. ()

b. Notations explaining the effectiveness of both versions of the rule will be included along with the rule text. ()

c. Upon the date EPA issues written notification that the rule revisions have been approved, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. ()

d. In the event EPA issues written notification that the rule revisions have been disapproved, the existing rule effective for CWA purposes will continue to apply. The disapproved rule revisions and notations will be deleted from the Idaho Administrative Code. ()

03. Previously Approved Rules. Pursuant to 40 CFR 131.21(e), previously approved rules remain in effect for CWA purposes until a replacement water quality standard is promulgated by the state and approved by EPA or a more stringent federal standard is promulgated. ()

04. Information Regarding the Status of EPA Review. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>. ()